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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN E. FUNCHES,
Plaintiff,

v.

CHAS. LEVY CIRCULATING CO. LLC.
Defendant.

)
) CIVIL ACTION
)

) **08CV3062**
)

) **JUDGE PALLMEYER**
)

) **MAGISTRATE JUDGE DENLOW**
)

COMPLAINT OF EMPLOYMENT DISCRIMINATION

FILED

MAY 28 2008 TC

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

1. This is an action for employment discrimination.
2. The plaintiff is John E. Funches of the county of Cook in the State of Illinois.
3. The defendant is Chas. Levy Circulating Co. LLC. whose street address is 1140 N. Northbranch, Chicago, Illinois 60622 and whose phone number is 312-440-4400.
4. The plaintiff was employed by the defendant at 1140 N. Northbranch, Chicago, Illinois 60622.
5. The plaintiff was employed but is no longer employed by the defendant.
6. The defendant discriminated against the plaintiff on or about January 29, 2007.

7. The defendant is not a federal agency, and the plaintiff has filed a charge against the defendant asserting the acts of discrimination indicated in this complaint with the Illinois department of Human Rights, on or about July 27, 2007. A copy of the charge is attached. It is the policy of both the Equal employment opportunity Commission and the Illinois Department of Human Rights to cross-file with the other agency all charges received. The plaintiff has no reason to believe that this policy was not followed in this case.
8. The United States Equal Employment Opportunity Commission has issued a Notice of Right to Sue, which was mailed on Feb. 29, 2008 and received by the Plaintiff within a few days thereafter, a copy of which Notice is attached to this complaint.
9. The defendant discriminated against the plaintiff because of plaintiff's Color (Title VII of the Civil Rights Act of 1964 and 42 U.S.C. Sec. 1981) and Race (Title VII of the Civil Rights Act of 1964 and 42 U.S.C. Sec. 1981).
10. Jurisdiction over the statutory violation alleged is conferred as follows: for Title VII claims by 28 U.S.C. Sec. 1331, 28 U.S.C. Sec.1343(a)(3), and 42 U.S.C. Sec. 2000e-5(f)(3); for 42 U.S.C. Sec. 1981 by 42 U.S.C. Sec. 1988.
11. The Defendant terminated plaintiff's employment on January 29, 2007.
12. The Defendant's Delivery Manager terminated the plaintiff because of his race. Said


Manager indicated plaintiff's was a poor performer based upon racial stereotypes of laziness and unreliability and stated that said laziness and unreliability was due to his race. Defendant's Delivery Manager failed to assign a driver's helper to plaintiff on numerous occasions and then criticized and eventually fired plaintiff for poor performance on such occasions. Similarly situated white drivers were not criticized and fired for poor performance under similar circumstances.

13. The plaintiff demands that the case be tried by a jury.

WHEREFORE, the plaintiff requests that this court grant the following relief to the plaintiff:

- (a) Direct the defendant to re-employ the plaintiff;
- (b) Grant the plaintiff appropriate injunctive relief, lost wages, front pay, compensatory damages, punitive damages, and costs, including reasonable attorney fees and expert witness fees and grant such other relief as the Court may find appropriate.

Plaintiff,

By: 
William V. Saracco

William V. Saracco
161 N. Clark St, Ste 4700
Chicago, Illinois 60601
(312) 523-2064

EXHIBIT A

EEOC Form 161-9 (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: John E. Funches
1046 31st Avenue
Bellwood, IL 60104

From: Chicago District Office
500 West Madison St
Suite 2800
Chicago, IL 60661

CERTIFIED MAIL 7099 3400 0014 4054 2938



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

21B-2007-02337

Armernola P. Smith,
State & Local Coordinator

(312) 886-5973

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

John P. Rowe

02/29/2008

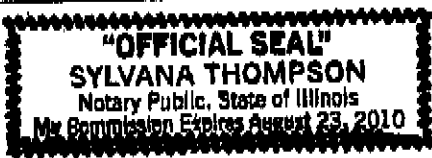
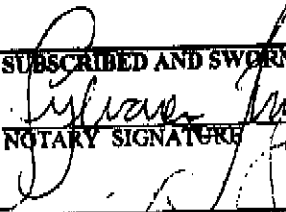
Enclosures(s)

John P. Rowe,
District Director

(Date Mailed)

cc: CHAS LEVY CIRCULATING CO
1140 N Northbranch
Chicago, IL 60622

ADP

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974: See Privacy act statement before completing this form.		AGENCY <input checked="" type="checkbox"/> IDHR <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER 2008CF0296
08W0727-02			
Illinois Department of Human Rights and EEOC			
NAME (Indicate Mr. Ms. Mrs.) Mr. John E. Funches		HOME TELEPHONE (Include area code) (708) 493-0229	
STREET ADDRESS 1046 31st Ave		CITY, STATE AND ZIP CODE Bellwood, Illinois 60104	DATE OF BIRTH 07/20/52
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (IF MORE THAN ONE LIST BELOW)			
NAME Chas. Levy Circulating Co., LLC		NUMBER OF EMPLOYEES, MEMBERS 15+ 30	TELEPHONE (Include area code) (312) 440-4400
STREET ADDRESS 1140 N. Northbranch		CITY, STATE AND ZIP CODE Chicago, Illinois 60622	COUNTY Cook
NAME		TELEPHONE (Include area code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON:		DATE OF DISCRIMINATION	
RACE		EARLIEST (ADEA/EPA) LATEST (ALL) 01/29/07 01/29/07	
DEPT. OF HUMAN RIGHTS INTAKE UNIT JUL 2 7 2007 RECEIVED BY _____		<input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed attach extra sheets)			
<p>I was discharged on January 29, 2007 because of my race, Black. The reason given for my discharge by David Nykiel (white), the Delivery Manager, was poor performance. However, I was a driver and often not assigned a driver's helper. My performance was as good as any white driver who's helper failed to show for work. I was the only driver not assigned a helper and written up for poor performance.</p> <p>I believe I have been discriminated against because of my race, Black.</p>			
I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 7/26/07 NOTARY SIGNATURE MONTH DATE YEAR	
 NOTARY SEAL		 7/26/07 SIGNATURE OF COMPLAINANT DATE	
I declare under penalty that the foregoing is true and correct I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.			

PRIVATE SUIT RIGHTS:

This issuance of this Notice of Right to Sue ends EEOC's process with respect to your charge. You may file a lawsuit against the respondent named in your charge within 90 days from the date you receive this Notice. Therefore you should **keep a record of this date**. Once this 90-day period is over, your right to sue is lost. If you intend to consult an attorney, you should do so as soon as possible. Furthermore, in order to avoid any question that you did not act in a timely manner, if you intend to sue on your own behalf, your suit should be filed **well in advance of the expiration of the 90-day period**.

You may file your lawsuit in a court of competent jurisdiction. Filing this Notice is not sufficient. A court complaint must contain a short statement of the facts of your case which shows that you are entitled to relief. Generally, suits are brought in the state where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office.

You may contact EEOC if you have any questions about your rights, including advice on which court can hear your case, or if you need to inspect and copy information contained in the case file.

A lawsuit against a **private** employer is generally filed in the U.S. District Court.

A lawsuit under Title VII of the Civil Rights Act of 1964, as amended, against a **State agency or a political subdivision of the State** is also generally filed in the U.S. District Court.

However, a lawsuit under the Age Discrimination in Employment Act or the Americans with Disabilities Act or, probably, the Equal Pay Act against a **State instrumentality** (an agency directly funded and controlled by the State) **can only be filed in a State court**.

A lawsuit under the Age Discrimination in Employment Act or the Americans with Disabilities Act or the Equal Pay Act against a **political subdivision of the State**, such as municipalities and counties, may be filed in the U.S. District Court.

For a list of U.S. District Courts, please see reverse side.

IF THE FIRST THREE CHARACTERS OF YOUR EEOC CHARGE NUMBER ARE "21B" AND YOUR CHARGE WAS INVESTIGATED BY THE ILLINOIS DEPARTMENT OF HUMAN RIGHTS (IDHR), REQUEST FOR REVIEWING AND COPYING DOCUMENTS FROM YOUR FILE MUST BE DIRECTED TO IDHR.

ATTORNEY REPRESENTATION:

If you cannot afford or have been unable to obtain a lawyer to represent you, the court having jurisdiction in your case may, assist you in obtaining a lawyer. If you plan to ask the court to help you obtain a lawyer, you must make this request of the court in the form and manner it requires. Your request to the court should be made well before the end of the 90-day period mentioned above. A request for representation does not relieve you of the obligation to file a lawsuit within this 90-day period.

DESTRUCTION OF FILE:

If you file suit, you or your attorney should forward a copy of your court complaint to this office. Your file will then be preserved. Unless you have notified us that you have filed suit, your charge file could be destroyed as early as six months after the date of the Notice of Right to Sue.

IF YOU FILE SUIT, YOU OR YOUR ATTORNEY SHOULD NOTIFY THIS OFFICE WHEN THE LAWSUIT IS RESOLVED.

CHICAGO DISTRICT OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
500 WEST MADISON STREET, SUITE 2800
CHICAGO, ILLINOIS 60601

OFFICIAL BUSINESS

CERTIFIED MAIL



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William V. Saracco Esq.
Attorney at Law
WILLIAM V. SARACCO
161 North Clark Street
Suite 4700
Chicago, IL 60601

